



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

Order Instituting Rulemaking into the Review of the
California High Cost Fund B Program.

R.06-06-028
(Filed June 29, 2006)

11-28-07
08:00 AM

**REPLY COMMENTS OF COX CALIFORNIA TELCOM, L.L.C.,
DBA COX COMMUNICATIONS ON ASSIGNED COMMISSIONER
RULING REGARDING THE SCOPING AND SCHEDULING OF
PHASE II ISSUES, DATED OCTOBER 5, 2007**

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Dated: November 28, 2007

I. Introduction and Background.

Pursuant to the Commission's Rules of Practice and Procedure ("Rules") and the Administrative Law Judge's ruling extending the time to submit reply comments, dated November 15, 2007, Cox California Telcom, L.L.C., *dba* Cox Communications (U-5684-C) ("Cox") submits these timely reply comments on issues set forth in the Assigned Commissioner Ruling Regarding the Scoping and Scheduling of Phase II Issues, dated October 15, 2007 ("AC Ruling").

In response to the lengthy list of questions included in the AC Ruling, parties submitted extensive opening comments covering a broad range of complex issues. While most issues concerning the reverse auction are inter-related and difficult to examine on a stand-alone basis, Cox generally supports other parties' comments to the extent they recommend that the Commission:

- Limit any support to providers of basic service in truly high-cost areas;¹
- Design and implement a reverse auction and definition of "basic service" that is technology-neutral and competitively neutral;²
- Not expand the size of the existing high-cost fund, and thereby, not increase the burden on all telecommunications consumers;³
- Conduct workshops to explore the numerous issues relevant to the Commission implementing a reverse auction;⁴
- Implement the reverse auction and not pursue updating the HM 5.3 cost model at all (or implement the reverse auction prior to determining whether it is necessary to utilize, and thereby update, the HM 5.3 or any other cost model);⁵
- Incorporate 2000 census data to reduce the number of CBGs deemed as high-cost areas;⁶ and

¹ Comments of Verizon, pp. 7-8 (hereafter "Verizon OC"); Opening Comments of Sprint Nextel, p. 9 (hereafter "Sprint Nextel OC").

² Comments of the California Cable and Telecommunications Association, p. 4 (hereafter "CCTA OC"). Comments of Time Warner, pp. 8-9 (hereafter "TW OC"); Comments of Omnipoint Communications, Inc., *dba* T-Mobile (U-3056-C), pp. 5-6 (hereafter "T-Mobile OC"); Sprint Nextel OC, p. 9, 15-16;; Phase II Comments of AT&T California (U 1001 C); AT&T Advanced Solutions Inc., (U 6346 C), TCG Los Angeles, Inc. (U 5462 C), TCG San Diego (U 5389 C), and AT&T Mobility LLC (New Cingular Wireless PCS, LLC (U 3060 C), CAGAL Cellular Communications (U 3021 C) Santa Barbara Cellular Systems Ltd. (U 3015 C), and Visalia Cellular Telephone Company (U 3014 C), p. 23 (hereafter "AT&T OC").

³ Sprint Nextel OC, pp. 6, 19; Verizon OC, p. 1.

⁴ T-Mobile, OC, p. 9; Opening Comments of the Division of Ratepayer Advocates (hereafter "DRA OC").

⁵ CCTA OC, pp. 1-3. DRA OC, p. 13; Sprint Nextel OC, p. 2; T-Mobile OC, pp. 9-11; TW OC, pp. 1-7

- Not require carriers regulated by the Commission who will serve as COLRs in high-cost areas to be subject to any additional financial, reporting, service quality or audit requirements;⁷

As discussed in greater detail below, the multitude of substantive and complex issues raised in opening comments makes clear that the Commission should conduct a series of workshops prior to adopting final rules governing the reverse auction. Timely implementation of the reverse auction is critical to the Commission effectively transitioning to a new high-cost program but the reverse auction will be successful only if the Commission takes the time to complete the necessary ground work.

II. The ILECs' Respective Proposals To Inextricably Link A Reverse Auction With The Commission Updating Cost Models Should Be Rejected.

Not surprisingly, parties commenting on the AC Ruling identify numerous issues that the Commission will need to resolve in designing, implementing, operating and administering a reverse auction for high-cost support. Parties also acknowledge that the Commission will be charting new territory as no other commission currently operates a reverse auction. While opening comments reflect a general consensus on some key issues,⁸ commenting parties do not see eye-to-eye on several other critical elements. For example, only the ILECs would have the Commission continue to utilize out-dated, AT&T- and Verizon-centric cost models to set parameters governing the high-cost program. In an apparent effort to guarantee use of the HM 5.3, AT&T and Verizon propose a reverse auction structure and related features that are inextricably linked to the Commission utilizing such cost models. All other parties diligently explain why cost-models are not necessary in light of the Commission conducting reverse auctions.

For example, all other parties commenting on this issue plainly explain the futility with and difficulty of updating cost models. Expressly contrary to AT&T and Verizon, other parties' comments accurately note that utilizing the HM 5.3 could undermine the very purpose of the reverse auction and that

⁶ T-Mobile OC, p. 10, fn. 25.

⁷ See AT&T OC, p. 8; Sprint Nextel OC, p. 12.

⁸ For example, a non-exhaustive list of items for which there is general consensus includes the following: high-cost support should be limited to basic service or a comparable service; that multiple bidders are critical to the success of any auction; and that bidders should be allowed to submit contingent bids.

the Commission should not rely on the HM 5.3 to limit the parameters of the reverse auction.⁹ Other parties uniformly underscore the fact that any reliance on a cost model will require the Commission and other parties (most likely, only DRA and TURN) to commit unnecessary but a significant amount of resources towards a needless task.¹⁰ Even Verizon acknowledges how time-consuming and resource-intensive it would be to update the HM 5.3 cost model¹¹ and the large number of adjustments that would be necessary.¹² And DRA correctly reminds the Commission that when “working with a familiar, adopted version of HM 5.3, it took from a July 2002 ruling until March 2006 to adopt UNE results for a single ILEC (Verizon).”¹³ Under AT&T’s and Verizon’s respective proposed auction structures, the Commission would not only be required to update the HM 5.3 for AT&T and Verizon, but somehow apply the HM 5.3 to Citizens for the first time. An objective assessment of these facts demonstrates that AT&T and Verizon would like to commit the Commission and other parties to an on-going, significant investment of time and other resources that simply is not necessary.

Cox recommends that the Commission reject the ILECs’ respective proposals to inextricably link the reverse auction with any data derived from the HM 5.3 or any other cost model.

III. Opening Comments Demonstrate That Numerous Issues Relevant To The Design, Operation and Administration Of A Reverse Auction Should Be Discussed At Workshops.

Parties opening comments include a wealth of ideas with respect to what the Commission will need to address in adopting competitively- and technology-neutral reverse auction rules. To ensure that parties’ ideas, proposals and concerns are properly addressed, Cox continues to recommend that the Commission conduct workshops. Through the workshop process, parties will have the opportunity to investigate the numerous proposals included in comments and hopefully gain consensus on the reverse auction structure and corresponding features.

⁹ See e.g. CCTA OC, p. 3.

¹⁰ TW OC, pp. 1-8; CCTA OC, p. 1-3; T-Mobile OC, pp. 9-10; Sprint Nextel OC, p. 6; DRA, pp. 13-14.

¹¹ Verizon OC, pp. 21-22. Verizon optimistically suggests that the updating process will take at least 16 weeks. And AT&T even acknowledges that litigating cost model caps would be expensive. AT&T OC, p. 19.

¹² Verizon OC, pp. 18-20.

¹³ DRA OC, p. 20.

A. Parties Agree That Multiple Bidders Is Essential To the Success Of A Reverse Auction.

Most, if not all, parties recognize that any reverse auction conducted by the Commission must include multiple bidders participating and that such bidders will include entities other than regulated, wireline providers. Parties agree that potential bidders should include wireless carriers, broadband over power line providers and VoIP providers, none of which provide “basic service” as currently required under the current high-cost program rules. Parties recognize that the Commission must modify the definition of basic service, or otherwise clearly define the “service” that the winning bidder will be required to make available to consumers in high-cost areas to ensure that additional providers are eligible to bid and can provide a voice service comparable (but not necessarily identical) to what regulated providers offer today and that is otherwise satisfactory to the Commission.

Parties’ proposed changes to the current definition of “basic service” generally include either removing elements no longer necessary (i.e. DRA proposes removing touch-tone dialing as a requirement)¹⁴ or including text to expressly reflect wireless and VoIP providers.¹⁵ Cox agrees with these suggestions. Cox cautions the Commission, however, when considering TURN’s proposal to include access to basic information services and the capability to provide service for a reasonable period of time if the power goes out in the definition of service that COLRs serving high cost areas must provide.¹⁶ Specifically, the Commission should not adopt these or similar requirements that preclude non-wireline carriers from participating in the reverse auction as this will severely limit the success of the reverse auction. Also, DRA implies that 911 may not be a required element of basic service in light of DRA interpreting a recently issued presiding offer’s decision (“POD”) to mean that the “ILECs are obligated to offer residences 911 services over their existing facilities indefinitely.”¹⁷ The Commission should not rely on a POD issued in a complaint proceeding in determining the elements of basic service in high-cost areas. Not only is the POD under appeal but the POD does not apply uniformly to all carriers.

¹⁴ DRA OC, pp. 31-32.

¹⁵ See Sprint Nextel OC 30; T-Mobile, pp. 6-7.

¹⁶ Comments of The Utility Reform Network, p. 23 (hereafter “TURN OC”).

¹⁷ DRA OC, p. 9.

Moreover, the very purpose of this rulemaking, as well as R.06-06-028, which are both quasi-legislative proceedings, is for the Commission to establish policy or rules affecting a class of regulated entities.¹⁸

The Commission is considering the definition of basic service with respect to California Lifeline service in R.06-06-028 and the definition adopted by the Commission should be consistent with the service COLRs serving high-cost areas will be required to provide in that eligible Lifeline consumers may reside in high-cost areas. Cox anticipates that the Commission will and should adopt one definition of basic service that will be applicable to Lifeline and any high-cost program. Cox recommends that the Commission defer the definition of basic service to R.06-06-028 and supplement that record with comments from this proceeding concerning the definition of basic service.

A number of parties suggested that the definition of basic service be revised so that voice over internet protocol (VoIP) providers would be deemed eligible to participate in the reverse auction and Time Warner recommends that only entities deploying packet networks, as compared to voice application providers, should be deemed eligible to participate. Cox also submits that interconnected VoIP service providers be considered as eligible participants and agrees with Time Warner that only interconnected VoIP service providers that either own or control the networks over which they will provide basic service be eligible for high-cost support. An entity that serves as a voice application provider only has not made the costly investment of facilities and should not benefit from support intended for facilities-based providers.

Frontier opposes the reverse auction altogether and suggests that only carriers designated as ETCs be eligible to receive high-cost support.¹⁹ Other parties have suggested the same restriction in R.06-06-028 with respect to carriers that participate in the Lifeline program. Cox has repeatedly responded to this misplaced suggestion and soundly explained why the Commission should reject it.²⁰ Because Frontier's suggestion impacts COLRs serving high-cost areas, as well as carriers providing Lifeline service, Cox recommends that the Commission consider this issue only in R.06-06-028.

¹⁸ CPUC Rule 1.3(d).

¹⁹ Comments of Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California, p. 6 (hereafter "Frontier OC").

²⁰ Cox hereby incorporates by reference its comments demonstrating why the Commission should not condition COLR status on ETC status.

B. Multiple COLRs Providing Service To Consumers In High-Cost Areas and Receiving the Designated Cost Subsidy Will Not Increase the Overall Size of the Fund.

Cox was surprised that parties suggested multiple COLRs receiving the designated subsidy for a high-cost area would increase the overall size of the high-cost fund. The current high-cost fund rules permit multiple COLRs to serve the same area but also ensure that carriers recover only for the consumers that they serve to prevent duplicative claims. Verizon and AT&T oppose the designation of multiple COLRs because they suggest that the winning bidder receive an annual subsidy amount to serve all consumers in a given winning-bid area.²¹ Neither AT&T nor Verizon explain in detail how the annual subsidy would be calculated or what services it would cover, and therefore, Cox cannot readily determine if multiple COLRs operating within this structure would increase the overall size of the high-cost fund.

AT&T also suggests that there may be consumer confusion with multiple COLRs and that a COLR, by definition means one and only one carrier.²² Contrary to AT&T's suggestion, current rules allow multiple COLRs and that has not resulted in consumer confusion. DRA, TURN and Sprint appear to recommend a "winner takes all" approach to avoid increasing the overall subsidy draw, as well.²³ These parties' comments, however, do not explain how multiple COLRs would cause the fund to unnecessarily expand or that the current rules have resulted in carriers submitting duplicative claims.

The current CHCF-B program permits multiple COLRs to serve the same high-cost area but not the same high-cost consumer.²⁴ When it adopted final rules for the CHCF-B program in Decision 96-10-066, the Commission concluded that there may be more than one COLR serving a given GSA.²⁵ Indeed, the Commission expressly rejected a proposal for the mid-size and Small LECs to be designated as the "exclusive" COLR in their respective service territories:

²¹ AT&T OC, pp. 10-11; Verizon OC, pp. 8-9.

²² AT&T OC, pp. 4-5, 13.

²³ DRA OC, p. 12; Sprint OC, p. 11; TURN OC, pp. 16-18.

²⁴ The COLR is the regulatory concept that there must always be a provider that is obligated to serve all customers in a particular service area. The 22 LECs have been the COLR in California's 500 plus local exchanges. With the introduction of competition, the COLR concept changes because certain competitors may choose to serve a smaller service area or group of customers than the incumbent LEC is now obligated to serve. ***In certain areas, within existing LEC service territories, that may result in more than one COLR, and in other areas there may only be one COLR.*** D.95-07-050, 60 CPUC 2d 536, 1995 WL 493334 (Cal.P.U.C.) * 30. (Emphasis added).

²⁵ Universal Service and Compliance with the Mandates of Assembly Bill 3643, Rulemaking Proceeding 95-01-020, Decision 96-10-066, 68 CPUC 2d 524, 1996 WL 651546 (Cal.P.U.C.) * 118.

We will not adopt the suggestions by Roseville and the Smaller Independent LECs that because of their size and investments, that these LECs should be designated the exclusive COLR for a period of no less than five years.²⁶

COLRs operating in the same CBGs collect the same subsidy amounts per CBG,²⁷ but the Commission's rules do not allow double-recovery from the CHCF-B for services provided to high-cost area customers. First, unlike the California Lifeline Program (formerly known as ULTS), the CHCF-B program does not provide direct benefits to CHCF-B customers as they must pay the carrier's tariffed rate (and not a discounted rate like California Lifeline customers). Second, carriers may only submit CHCF-B claims for the primary line of a given household.²⁸ To do otherwise would result in an unsupported claim that would be identified through the Commission's review process.²⁹

Under the current rules, multiple carriers serve the same high-cost areas and obtain the same high-cost subsidy. Multiple COLRs serving the same area has not resulted in duplicative or excessive draws on the CHCF-B; nor have they placed any strain on the fund in any manner different than if only a single carrier were designated as the COLR for any given CBG. Under Cox's reverse auction proposal, multiple COLRs would serve the same high-cost area and obtain the same high-cost area support (Designated Cost Benchmark³⁰ less the \$36.00 benchmark). The Commission should allow multiple COLRs to serve and collect the same Designated Cost Benchmark and the Commission can do so by re-adopting rules similar to those governing the existing program.

²⁶ Id., Decision No. 96-10-066, 68 CPUC 2d 524, 1996 WL 651546 (Cal.P.U.C.) * 123.

²⁷ The COLR subsidy is calculated as follows: (a) The benchmark will be defined as the greater of the statewide average cost as determined by the CPM, or the incumbent's flat rate plus EUCL. (b) If the per line cost of serving a CBG exceeds the benchmark, the COLR will receive the difference between the benchmark and the per line CPM cost estimate for the CBG. (c) In areas where the incumbent's flat rate plus EUCL is less than the benchmark, the COLR will receive the difference between the benchmark and the incumbent LEC's flat rate plus EUCL, in addition to the subsidy described in subdivision (2) above. (d) The COLR's draw from the CHCF-B will be offset by the COLR's revenue per subsidized line from the CCLC and the federal Universal Service Fund. The amount of the offset will not exceed the amount of subsidy the carrier would have received without the offset. Id., Appendix B, Rule 6(c)(2).

²⁸ D.96-10-066, p. 195; Appendix B, Rule 6(C).

²⁹ Specifically, COLRs "are paid by the State Controller after their legitimately submitted claims have been reviewed by the Telecommunications Division (TD)." OIR, R.06-06-028, p. 14 (citing D.98-09-039, Ordering Paragraph 7 states: "The CHCF-B Administrative Committee shall review each monthly claim submitted by the large LECs. Upon completion of each monthly claim, the Committee shall provide written notice to the large LEC submitting the claim regarding the amount of the claim that the LEC is authorized to draw from its accumulated CHCF-B surcharge revenues.).

³⁰ Cox's opening comments described the Designated Cost Benchmark as the lowest bid received during a reverse auction for a given CBG. Opening Comments of Cox, p. 5.

Cox submits that this issue should be included in the agenda of items to be discussed in workshops so that parties may fully discuss the implications of the Commission permitting multiple COLRs or pursuing a winner takes all approach.

C. The Commission Should Investigate Whether A Single-Round, Blind and Sealed-Bid Auction Will Have the Most Beneficial Results.

There is general consensus on the need for multiple bidders in any reverse auction that the Commission conducts, but parties' comments do not reflect consensus on a reverse auction structure. Although there is some difficulty in recommending a structure for a reverse auction at this early stage, parties nonetheless less offered a wide-range of options. The Commission will need to fully investigate the benefits and disadvantages of parties' proposals corresponding commentary and analysis. For example, Cox submits that the Commission will receive the most low-cost bids by conducting a single, simultaneous, descending, sealed-bid auction where bidders are not identified prior to or during the auction. Cox submits that keeping information about the type or number of other potential bidders confidential is important for at least two critical reasons. First, the lack of information about other bidders means that bidding entities should submit aggressive bids to win the auction. Similarly, TURN notes that sealed bids may likely result in ILECs ignoring their sunk costs.³¹ Second, this structure is the best method for avoiding any potential "bid signaling" or collusion among bidding parties.³²

A number of parties offer alternative models that require bidders to identify themselves and their technologies prior to bidding but it was not clear to Cox whether these parties intend for the identity or the number of bidders to be disclosed only to the Commission or to other potential bidders, as well. For example, T-Mobile proposes that there be no subsidies provided until a carrier requests such which would trigger the reverse auction in such areas.³³ Similarly, Verizon suggests that the Commission only conduct an auction on the assurance that two qualified bidders identify themselves, are qualified and agree to

³¹ TURN OC, pp. 21-22.

³² Id., pp. 19-20.

³³ T-Mobile OC, pp. 8-9.

participate in an auction.³⁴ And TURN suggests that bidders should identify themselves prior to the auction and provide a description of the technology they intend to use.³⁵

Any information about the types of bidders, the number of bidders and the areas where bidders intend to bid signals to other auction participants critical data that may influence their bid proposals. As the FCC acknowledged in its decision adopting general rules applicable to any auctions it conducted, “Some auction experts argue that anonymity makes it harder to target a firm for strategic hold-up because the bidding and aggregation strategies of specific competitors cannot be easily detected.”³⁶ If AT&T and Verizon know that the only other bidder is a wireless carrier in a given CBG, for example, then they would likely tailor their bids accordingly and potentially submit a bid requesting a higher subsidy than they may have submitted if they did not know how many bidders or the type of bidders.

In adopting its general auction rules, the FCC acknowledged that “experts disagree on the potential for knowledge of bidders' identities to facilitate collusion and other strategic behavior.”³⁷ In light of this finding, the FCC adopted rules that allowed it to conceal bidder identities if it deemed it “feasible and desirable” to do so.³⁸ The FCC very recently decided to continue pursuing anonymous (or limited information) bidding in auctions of licenses for services in the 698-806 MHz band (the 700 MHz Band), scheduled to begin on January 24, 2008, because it will facilitate competitive entry:

Such information procedures are intended to reduce the potential for anti-competitive bidding behavior, including bidding activity that aims to prevent the entry of new competitors.³⁹

Depending on the number of auctions that the Commission determines it will conduct or the number of bidders in a given auction, it may find such flexibility appropriate and beneficial. But again, the Commission must be aware that adopting different rules for different auctions is a signal in itself to

³⁴ Verizon OC, pp. 7-8.

³⁵ TURN OC, p. 23.

³⁶ In the Matter of Implementation of Section 309(J) Of the Communications Act- Competitive Bidding, 9 FCC Rcd. 7245, FCC 94-215, ¶ 41 (rel. Aug. 15, 1994). The FCC discusses the advantages and disadvantages of disclosing bidder information in this order.

³⁷ Id., ¶ 42.

³⁸ Id.

³⁹ Auction of 700 Mhz Band Licenses Scheduled for January 24, 2008, DA 07-4171, ¶ 4 (rel. October 5, 2007). While the FCC is requiring anonymous bidding, it will release certain information before and during this particular auction.

potential bidders in any auction. Cox recommends that the Commission, through workshops, keep auction theory in mind but focus on the specific and unique factual circumstances underlying the reverse auction that the Commission will conduct and the Commission's goals for such auction.

D. Eligible Participants Should Submit Bids Requesting Subsidy On a Per-Line Basis

Without Regard To The Retail Price A Winning Bidder Will Charge.

AT&T and Verizon recommend that an auction award be based on an annual subsidy amount, as compared to a per-line cost to serve a consumer in a given CBG.⁴⁰ Cox opposes any proposal to award an "annual support amount," unless such amount is based on the number of high-cost consumers served. For example, AT&T suggests that the number of households and subscribers is not relevant to determining high-cost support because a per-line subsidy does not reflect the financial commitment made by the COLR.⁴¹ Consistent with all its existing universal service programs and goals, the Commission must adopt a high-cost subsidy based on the number of high-cost consumers actually served and not on a winning bidder's general costs to serve an entire high-cost area. In particular, it would be a mistake to base such a subsidy on the historical costs of any particular provider to serve an entire area.

Indeed, the Commission already determined that future subsidies would be based on the difference between the efficient per-line cost (as represented by the lowest qualified bid in a reverse auction) and the affordability benchmark of \$36.00:

[T]he rates that are charged for basic service will not be used to determine the applicable level of B-Fund support. Instead, support levels will be calculated based upon the \$36.00 line benchmark (or any subsequent revision in the benchmark). The B-Fund support will be limited to the difference between the \$36.00 benchmark and the applicable per-line cost above the benchmark.⁴²

On a related matter, AT&T and TURN suggest that the Commission set the retail rate that the winning bidder will charge prior to the auction commencing.⁴³ And Verizon suggests that the Commission set a reserve for each CBG which will be based on an update from the HM 5.3 model (or the

⁴⁰ Verizon OC, pp. 8-9; AT&T OC, pp. 10-11.

⁴¹ AT&T OC, p. 11.

⁴² Decision, p. 52.

⁴³ AT&T OC, p. 3; TURN OC, p. 2.

current amount of support depending on the timing of the auction).⁴⁴ These are puzzling suggestions. The Commission has set \$36.00 as an upper limit in that a COLR may not receive support if it charges more than \$36.00. As indicated above, the Commission does not intend to abandon use of the \$36.00 benchmark when determining the support amount after completion of the reverse auction. And the reverse auction will determine the applicable per-line cost. As such, the retail price does not appear relevant because the Commission will calculate the subsidy based on the winning bidder's cost and the \$36.00 benchmark. Similarly, the formula adopted by the Commission eliminates the need for any "reserve" support amount as proposed by Verizon. The now well-recognized trend of consumers to purchase basic telephone services as part of a bundle of other communications services also argues against attempting to set the subsidy level based on the "rate" charged by the COLR. The "rate" may in fact be a bundled rate that reflects the total purchases from the provider, with the basic service portion being embedded in that rate.

TURN suggests that the rate to high-cost consumers must remain fixed or capped for the duration of high-cost support or otherwise rates would rise inappropriately at the expense of all California ratepayers.⁴⁵ First, high-cost support is no longer based on retail rates and the fund will not change in size if a COLR raises its rates to high-cost consumers. Second, allowing multiple COLRs and using a reverse auction to set the subsidy levels will serve to keep rates to high-cost consumers in balance. If one COLR were to raise its rates above that of the other COLRs, those consumers would have a choice. Third, the Commission has not and should not cap the rates of CLECs serving as COLRs. Similarly, AT&T suggests that high-cost service will only be "truly universal" if offered at an affordable rate.⁴⁶ But the Commission already determined what it deemed affordable when it adopted the \$36 benchmark. And moreover, the Lifeline program is available to low-income consumers and other consumers subscribed to certain state and federal programs. Accordingly, AT&T's proposal is misplaced. The Commission adopting a single capped rate that all COLRs must offer would be anti-competitive and wholly contrary to the Commission's regulation of CLECs' rates.

⁴⁴ Verizon OC, p. 10.

⁴⁵ TURN OC, p. 2.

⁴⁶ AT&T OC, p. 3.

E. The Commission Should Determine If It Can Promptly Implement A Pilot Auction Or If A Pilot Auction Will Be More Burdensome And Make Implementing The Reverse Auction More Difficult.

A number of parties recommend that the Commission conduct at pilot auction⁴⁷ or at least consider pursuing a pilot project.⁴⁸ And some parties recommend that the Commission conduct two pilot auctions to experiment with the two distinct geographical services areas and the different types of providers that may exist in such regions. For example, DRA notes that densely populated areas may attract multiple bidders, whereas sparsely populated areas will likely attract few credible bidders and that the Commission should get experience with each type of auction.⁴⁹ TURN proposes a trial in areas where a municipal service provider will likely bid.⁵⁰ TURN also recommends that the Commission design the pilot auction to allow bidders to “exploit economies of scale.”⁵¹

Cox does not disagree per se with other parties’ proposed pilots but submits that designing, implementing and operating one or two pilot auctions will be time-consuming and resource-intensive and could easily result in the Commission unnecessarily delaying the actual auctions. Additionally, any results of a pilot will impact the scope of the subsequent auctions. For valid reasons, selecting the service areas to be included in the pilot auction will likely be very contentious. Will the pilot be conducted only in AT&T’s territory or Verizon’s territory? Should the pilot auction include CBGs in AT&T’s, Verizon’s and the mid-size LECs’ territories? Just as critical, CBGs included in a pilot will not be included in subsequent auctions which could very well provide a competitive-advantage for some parties, and thereby, a competitive-disadvantage for others. Any pilot auction will have a long-term impact on the success of any subsequent auction.

The Commission must implement a reverse auction on a competitively-neutral and technology-neutral basis and parties’ opening comments demonstrate the difficulty of such task. Conducting pilot auctions or trials will only complicate the already-difficult task the Commission has undertaken. By

⁴⁷ AT&T, OC p. 12, DRA, pp. 11-12; Sprint Nextel, pp. 16-17.

⁴⁸ TURN, p. 39.

⁴⁹ DRA OC, p. 12.

⁵⁰ TURN, p. 39.

⁵¹ Id.

conducting a series of focused workshops and ensuring that all interested parties, including bidders and non-bidders attend and participate in such workshops, the Commission should be able to design and implement a reverse auction without first conducting a pilot auction. By doing so, the Commission will stay on track to timely implement the reverse auction and advance the operation and administration of the new high-cost fund.

F. Build-Out Requirements Should Only Apply To Areas Where No Facilities Exist When The Reverse Auction Is Conducted.

A number of parties recommend that the Commission adopt rules concerning winning bidders complying with build-out requirements. Cox understands that any winning bidder will be required to serve all consumers in the designated service area. As such, each bidder should submit a bid only for those areas in which it can serve all consumers in such area. Bidders should be permitted to serve consumers via their own networks or, in limited circumstances, by leasing facilities or obtaining services from other providers. Build-out benchmarks or requirements should be adopted only where no provider offers basic service and no network facilities exist. Cox agrees with Sprint that in those limited areas, the Commission should implement a two-step process:

Rather than assume high cost fund support, if somebody builds a house or a developer plans a development and requests service, the Commission should first see if a carrier will provide service without receiving a “high cost” subsidy. If no carrier steps forward, then the right to act as a COLR for that area should be determined through a reverse auction. Only if no provider steps forward to provide service in a new development should the area be subject to support-bidding. In that situation, the build-out timeframe should be part of the bid.⁵²

A vital part of Sprint’s proposed process is that the Commission would defer to the competitive marketplace first which is consistent with the Commission’s current regulatory approach.

IV. Conclusion.

Cox appreciates the efforts of the Commission in implementing a reverse auction for determining high-cost area support. As both the list of questions in the AC Ruling and parties responses to such ruling indicate, the Commission will need to resolve numerous, complex issues concerning design, implementation and operation of a reverse auction. These reply comments are intended to address some

⁵² Sprint Nextel OC, p. 16.

of the important issues raised by other parties as Cox agrees with other parties that noted it is difficult to respond to so many open and inter-related issues at this early stage. Again, Cox anticipates that parties and the Commission will further explore and best resolve all of the open issues through a series of workshops.

Consistent with the Commission's current rules governing CHCF-B program and the competitive marketplace, Cox submits that the Commission should design and adopt a reverse auction that permits multiple carriers to serve as COLRs in high-cost areas. Timely implementing the reverse auction is integral to the Commission completing its successful reform of the high-cost program and making it consistent with the competitive marketplace and the Commission's corresponding regulatory approach. To successfully implement a non-discriminatory, technology-neutral high-cost area program, Cox recommends that the Commission address in workshops all issues raised in comments filed in response to the AC Ruling.

Dated: November 28, 2007

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PROOF OF SERVICE

I, Margaret L Tobias, the undersigned, hereby declare that, on November 28, 2007, caused a copy of the foregoing:

**REPLY COMMENTS OF COX CALIFORNIA TELCOM, L.L.C.,
DBA COX COMMUNICATIONS ON ASSIGNED COMMISSIONER
RULING REGARDING THE SCOPING AND SCHEDULING OF
PHASE II ISSUES, DATED OCTOBER 5, 2007**

in the above-captioned proceeding, to be served as follows:

[X] Via email and US Mail to the Assigned Commissioner's Advisor

[X] Via email and US Mail to Administrative Law Judge

[X] Via email service to all parties included in the attached service

Dated: November 28, 2007 at San Francisco, California.

/s/

Margaret L. Tobias

Proceeding: R0606028 - CPUC - OIR INTO THE
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Last changed: November 20, 2007

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